

NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #RAP-10-058C



TITLE: Addressing the Interpretation of *Carcieri v. Salazar*

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights, secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Constitution of the United States, through the Treaty, Commerce, and Apportionment Clauses and the 14th Amendment, recognizes the sovereign status of Indian Tribes as Native nations established prior to the United States; and

WHEREAS, on February 24, 2009 the Supreme Court held in *Carcieri v. Salazar*, 129 S.Ct. 1058 (2009) that the Secretary of the Interior lacks authority to take land into trust under the Indian Reorganization Act (IRA) (25 U.S.C. secs. 465,479) for Indian tribes that were not under Federal jurisdiction at the time of its passage in 1934; and

WHEREAS, the Secretary of the Interior has not published any guidance on the effect of *Carcieri* on the land-into-trust authority vested in the Secretary by the IRA in the fifteen months since the Supreme Court's decision; and

WHEREAS, *Carcieri* based its decision on its interpretation of the word "now" in the phrase "now under Federal jurisdiction" in the IRA, and it did not define what it meant to be under federal jurisdiction for purposes of the IRA; and

WHEREAS, the Secretary of the Interior has the authority to interpret and administer the IRA, and the phrase "under federal jurisdiction" had a well-established meaning at the time of the IRA, the Secretary should fill the void left by the Supreme Court in *Carcieri* and provide an administrative interpretation of "under federal jurisdiction" in the IRA that aligns with the meaning the phrase would have had at the time the IRA passed; and

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WHEREAS, both before and after the passage of the IRA, it was commonly understood by Congress and the courts that the Constitution vests Congress with authority over commerce and intercourse with Indian Tribes, and “under federal jurisdiction” in the IRA meant that Indian tribes who had maintained tribal relations were subject to Congress’s exclusive authority in this area; and

WHEREAS, interactions between the federal government and a specific Indian Tribe prior to the passage of the IRA also constitute evidence of federal jurisdiction over that Tribe, and the Secretary should make clear that evidence of these interactions demonstrates federal jurisdiction; and

WHEREAS, it was well understood that the federal government’s jurisdiction over Indian tribes continues although it may be suspended when Congress explicitly terminates the federal government to government relationship, and Interior officials often disclaimed federal jurisdiction over Indian Tribes for economic reasons that did not reflect the federal government’s actual jurisdiction over those Tribes, the Secretary should make clear that any Tribe under federal jurisdiction continue to be under federal jurisdiction until Congress, and only Congress, explicitly terminates federal jurisdiction over that Tribe.

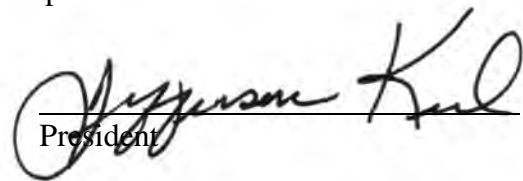
NOW THEREFORE BE IT RESOLVED, that NCAI calls upon the Secretary of the Interior to announce an interpretation of “under federal jurisdiction” in the IRA that: adopts a presumption that all Tribes were under federal jurisdiction at the time the IRA was passed; that looks to evidence of continued tribal relations or interactions with the federal government as proof of federal jurisdiction; and that acknowledges federal jurisdiction continues until Congress explicitly terminates jurisdiction over a Tribe; and

BE IT FURTHER RESOLVED, that in light of the nation-to-nation relationship between the federal government and Indian Tribes and President Obama’s consultation policy with regard to Indian Tribes, the Secretary of the Interior should immediately consult with Indian Tribes to ensure that the Secretary adopts an interpretation of “under federal jurisdiction” that acknowledges the history of federal jurisdiction over Indian Tribes; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

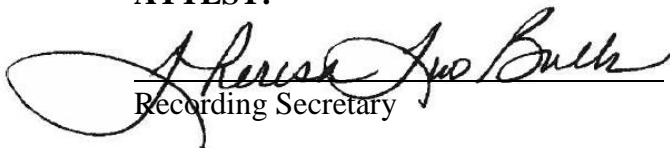
CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2010 Mid-Year Session of the National Congress of American Indians, held at the Rushmore Plaza Civic Center in Rapid City, South Dakota on June 20-23, 2010, with a quorum present.



 President

ATTEST:



 Recording Secretary